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September 14, 2020

The Honorable Richard M. Berman
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

**Re: United States v. Richard Gaffey
18 Cr. 693 (RMB)**

Dear Judge Berman:

On behalf of Richard Gaffey, we respectfully submit this letter in response to the Court's request for Mr. Gaffey's position on whether to conduct his upcoming sentencing hearing by videoconference. Mr. Gaffey consents to having his sentencing conducted by videoconference on September 24, 2020, at 10:30 a.m., as currently scheduled. Mr. Gaffey further submits that any further delay of his sentence will result in serious harm to the interests of justice. We have conferred with the government, which has stated that it does not consent to having Mr. Gaffey's sentencing be conducted by videoconference, for the reasons identified in its June 19, 2020 letter, Dkt. No. 223.

As the Court knows, Mr. Gaffey pled guilty before the Court on February 28, 2020. The Court, at that time, initially scheduled Mr. Gaffey's sentencing for June 29, 2020. Mr. Gaffey's sentencing was then rescheduled twice, first to July 27, 2020, and later to September 24, 2020, due, in large part, to the ongoing national health emergency resulting from the COVID-19 pandemic. The parties have filed their respective sentencing memoranda and the matter is ready to proceed to sentencing. No further delay is necessary or warranted.

The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") provides that, subject to certain requirements, videoconferencing and telephone conferencing may be used in criminal proceedings during the COVID-19 pandemic. With respect to felony pleas and sentencing hearings, Section 15002(b) of the CARES Act allows for the proceeding to be held via videoconference and telephone conference when the defendant consents and the district judge "in a particular case finds for specific reasons that the plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice." See *also* 20 Misc. 176 (CM), SDNY Standing Order No. M10-468 (authorizing the use of video or telephone conferencing for felony pleas under Rule 11 and felony sentencings under Rule 32 only upon a finding by the presiding judge that the "proceeding cannot be further delayed without serious harm to the interests of justice.") (Mar. 30, 2020).

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The Honorable Richard M. Berman

September 14, 2020

Page 2

There are ample grounds for the Court to order that Mr. Gaffey's sentencing should take place via videoconference under the CARES Act. As an initial matter, Mr. Gaffey has consented to proceeding in that manner. In addition, any further delay of Mr. Gaffey's sentence would constitute serious harm to the interests of justice. As things currently stand, Mr. Gaffey is scheduled to be sentenced nearly seven months after he pled guilty in this case. That is already a three-month delay beyond the four months contemplated by the Court's original schedule, whereby Mr. Gaffey was to be sentenced on June 29. Any additional delay – which could last several more months – would not be in the interests of justice, in light of Mr. Gaffey's age and health.

Despite recent gains by New York in controlling the spread of the COVID-19 virus, this District continues to operate under Phase II of the reopening plan, which encourages district judges to utilize videoconferencing and teleconferencing whenever possible. Further, Mr. Gaffey's age and extensive medical history, as more fully detailed in his sentencing submission, places him at risk for severe illness or even death due to COVID-19, a risk that would be exponentially increased if he were to travel to New York in order to attend his sentencing in-person.

Mr. Gaffey has been waiting for seven months to be sentenced for the offenses to which he pled guilty in February 2020. He is 76 years old and is struggling with serious medical issues, including hypertension, stage three chronic renal failure, type two diabetes, a high risk of coronary artery disease, and obesity. In light of the continuing nationwide threat posed by COVID-19, it is impossible to predict when it will be safe for Mr. Gaffey to travel to New York to attend his sentencing hearing. Indeed, there is no guarantee that the next adjournment of the sentencing hearing would be the last, as a third adjournment of Mr. Gaffey's sentence might easily lead to a fourth or even fifth adjournment. Given his age and deteriorating health, he is entitled to be sentenced as currently scheduled in order to enable him and his family to put this matter behind him. A further delay of unknown duration would clearly do serious harm to the interests of justice.

For these reasons, Mr. Gaffey respectfully requests that the Court sentence him on September 24, 2020, by video or teleconference.

Respectfully submitted,



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